
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Dave Mitchell)	File Number EB-04-NY-030
)	
WPEH807)	NAL/Acct. No. 200432380015
Bronx, NY)	
)	FRN # 0006524631

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: June 28, 2004

By the District Director, New York Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Dave Mitchell ("Mitchell"), licensee of station WPEH807, for a business operating as Community Car Service Corp. ("Community"), apparently violated Section 1.903(a) of the Commission's Rules (the "Rules"), by operating a base station transmitter and mobile units on an unauthorized frequency of 151.790 MHz.¹ We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),² that Mitchell is apparently liable for a forfeiture in the amount of four thousand dollars (\$4,000).

II. BACKGROUND

2. On February 13, 2004, a Commission agent, using a mobile direction finding vehicle, monitored the frequency 151.790 MHz in Bronx, NY, to follow-up a previous investigation concerning operation on unauthorized frequencies in the Private Land Mobile Radio Services. The agent determined that Mitchell, located at 3429 Eastchester Road, Bronx, NY 10469, operated a base transmitter and mobile units on an unauthorized frequency of 151.790 MHz. A search of the FCC database confirmed that neither Mitchell nor Community has a FCC license to operate a base station and mobile units on 151.790 MHz in Bronx,.

3. On February 17, 2004 the New York Office sent a Warning Letter, First Class Mail and Certified Mail Return Receipt Requested, to Community for unlicensed operation on the frequency 151.790 MHz. On February 25, 2004, the New York Office received a reply to the Warning Letter in which Community acknowledged the unauthorized operation on 151.790 MHz.

4. On March 1, 2004, Commission agents, conducted a follow-up inspection, and determined that Mitchell operated a base transmitter and mobile units on a frequency of 151.790 MHz. There was no evidence of a Commission authorization for Mitchell or Community to operate radio transmitters on 151.790 MHz in Bronx, NY.

¹ 47 C.F.R. § 1.903(a).

² 47 U.S.C. § 503(b).

III. DISCUSSION

5. Section 503(b) of the Act provides that any person who willfully fails to comply substantially with the terms and conditions of any license, or willfully fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.³ The term "repeated" means the commission or omission of such act more than one or for more than one day.⁴

6. Section 1.903(a) of the Rules provides that "[s]tatements in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service as set forth in this title and with a valid authorization granted by the Commission under the provisions of this part."⁵ Pursuant to this rule, licensees must exercise such direction and control as to assure that the transmitter is being operated in a permissible manner. A review of Commission records showed that Mitchell was granted authority under its license for station WPEH807 to operate one base station and 50 mobile units on a frequency of 151.805 MHz at 3429 Eastchester Road, Bronx, NY 10469. Agents observed the base station and mobile units at 3429 Eastchester Road, Bronx, NY 10469 operating on 151.790 MHz.

7. Based on the evidence before us, we find that Mitchell willfully/repeatedly violated Section 1.903(a) of the Rules by operating a base station and mobile units on an unauthorized frequency of 151.790 MHz on February 13, 2004 and March 1, 2004.

8. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("Forfeiture Policy Statement"), and Section 1.80 of the Rules, the base forfeiture amount for using an unauthorized frequency is \$4,000.⁶ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.⁷ Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors, a \$4,000 forfeiture is warranted.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80 of the Rules, Dave Mitchell **IS** hereby **NOTIFIED** of his **APPARENT LIABILITY FOR A FORFEITURE** in the amount of four thousand dollars (\$4,000) for violations of Section 1.903(a) of the Rules.⁸

³Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

⁵ 47 C.F.R. § 1.903(a).

⁶12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

⁷47 U.S.C. § 503(b)(2)(D).

⁸47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80, 1.903(a).

10. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Dave Mitchell **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FCC Registration Number (FRN) and the NAL/Acct. No. referenced in the caption.

12. The response, if any, must be mailed to Federal Communications Commission, New York Office, 201 Varick Street, New York, NY 20018, and must include the NAL/Acct. No. referenced in the caption.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

15. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division, 445 12th Street, S.W., Washington, D.C. 20554. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

⁸See 47 C.F.R. § 1.1914.

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16. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Mr. Dave Mitchell, 3429 Eastchester Road, Bronx, NY 10469.

FEDERAL COMMUNICATIONS COMMISSION

Daniel W. Noel
District Director
New York Office

Enclosure: FCC List of Small Entities